

VZCZCXYZ0003  
RR RUEHWEB

DE RUEHMO #3144/01 3641427  
ZNY CCCCC ZZH  
R 301427Z DEC 09  
FM AMEMBASSY MOSCOW  
TO RUEHC/SECSTATE WASHDC 5829  
INFO RUCNCIS/CIS COLLECTIVE  
RUEHMD/MOSCOW POLITICAL COLLECTIVE  
RHEHNSC/NSC WASHDC

C O N F I D E N T I A L MOSCOW 003144

SIPDIS

E.O. 12958: DECL: 12/29/2019  
TAGS: [PREL](#) [PGOV](#) [PHUM](#) [KDEM](#) [RS](#)  
SUBJECT: RULE OF LAW LIPSTICK ON A POLITICAL PIG:  
KHODORKOVSKIY CASE PLODS ALONG

REF: A) MOSCOW 603 B) MOSCOW 1226

Classified By: Pol Minister Counselor Susan Elliott for reason 1.4 (d)

11. (C) Summary: The prosecution in the Khodorkovskiy/Lebedev trial has finished reading its 188 volumes of evidence, and has moved on to questioning witnesses. An observer for the International Bar Association stated his belief that the trial is being conducted fairly. Related events outside of Russia continue to affect the case. A deposition in a U.S. court by Price Waterhouse Coopers (PWC) may show that PWC received GOR pressure to disavow its prior Yukos audits; the Russian Supreme Court upheld an ECHR ruling that Lebedev's initial arrest was illegal; and an arbitration court in the Hague found Russia to be bound by the Energy Charter Treaty, leaving it open to a large judgment against it and possible seizure of GOR assets abroad by Yukos shareholders. Despite the case's wide implications, it continues to be a cause celebre only for foreigners and a minority of Russians. The case also shows the great lengths that the GOR is willing to go in order to place a "rule of law" gloss on a politically motivated trial. End Summary.

Recent developments  
-----

12. (C) The trial of former Yukos chief Mikhail Khodorkovskiy and his associate Platon Lebedev continues in Moscow's Khaminovskiy court, having moved from the reading of the prosecution's evidence -- which comprised 188 volumes and lasted throughout the summer -- to questioning of the prosecution's witnesses. Thus far the prosecution has called 31 of its 250 witnesses, meaning that the trial will probably last until 2012. XXXXXXXXXXXX told us December 23 that he believes the trial is being conducted fairly and that Judge Danilkin has been doing everything in his power to make sure that the defense gets a fair opportunity to present arguments and challenge the prosecution's evidence.

13. (C) Among recent developments in the case, the defense has been trying to introduce the testimony of a former Price Waterhouse Coopers (PWC) auditor, who was deposed in California in August by Khodorkovskiy lawyers. The prosecution has objected to the introduction of the deposition into the case, complaining that they had not received sufficient notice; however, according to Teets, the Russian Embassy did not inform the head investigator in Russia until recently. The PWC deposition goes to the heart of Yukos's guilt or innocence; as Yukos's auditor, it signed off on Yukos's financial statements from 1994 to 2003, only to disavow this prior approval in 2007. As XXXXXXXXXXXX noted, if the audits were properly withdrawn, this will be a "black mark" for the defense; if not, it could help the defense, but would greatly tarnish PWC's international reputation. Teets said that the content of the deposition had not yet been made public, but speculated that the auditor had testified that PWC had been pressured by the Russian government into

withdrawing its prior certifications of Yukos books and records.

#### Lebedev ruling and other "international" issues

---

¶4. (SBU) The Yukos battle continues simultaneously both on domestic and the international fronts, with some concrete effects on the case's proceedings in Moscow. On December 23, the Russian Supreme Court ruled that the 2003 decision to arrest and detain Lebedev was illegal, in keeping with a 2007 ruling by the European Court of Human Rights (ECHR). (Note: The GOR often loses cases at the ECHR, and its common practice is to pay the compensation required by the ECHR's rulings while ignoring the substantive redress of the systemic problem involved. This decision represents a rare departure from this practice and signals a potentially encouraging trend. End Note.) The Supreme Court's ruling indicated only that the first two months of Lebedev's six years (to date) of incarceration were illegal, and thus might be considered only marginally relevant. However, the defense might use this ruling to argue that the entire conviction was tainted by the illegal detention and therefore should be thrown out. Defense lawyers told Radio Free Europe that they have not yet decided how to proceed, but called the ruling a "victory," while expressing bewilderment at the Supreme Court's two-year delay in ruling on the case.

¶5. (SBU) On December 23, Moscow's Basmany Court issued an arrest warrant in absentia for former Yukos treasurer Andrey Leonovich, which Khodorkovskiy's lawyers called a ploy to

pressure witnesses, and which will likely further exacerbate tensions with the UK (where Leonovich now resides) over the issue of extraditions. This move follows a December 2 ruling by an international arbitration tribunal in the Hague that Russia is bound by the Energy Charter Treaty (ECT), thus requiring the GOR to defend itself against claims from Yukos shareholders for an estimated 100 billion USD in damages (ref A). This sum would be the largest arbitration award ever, representing 10 percent of Russia's GDP, and although collecting the entire amount would be difficult, it could allow shareholders to seize state assets outside of Russia. The ECT ruling could affect, among others, companies such as Royal Dutch Shell and BP who were forced to renegotiate contracts on terms favorable to the GOR.

#### Russians apathetic, but skeptical towards GOR

---

¶6. (SBU) Given such significant international implications to the case, and given Khodorkovskiy's former stature, one might expect a large amount of focus on the Yukos case inside Russia. However, most Russians continue to pay scant attention (ref B). According to a December poll by the Levada Center encompassing 1,600 respondents in 127 cities and villages, only a little more than one-third of Russians are following the case (a May Levada poll showed the same figure for people who were at all aware that the case existed). The same poll, however, revealed a notable divergence in public opinion from the "party line" maintained by Prime Minister Vladimir Putin. In his December 3 televised question and answer session with the public, Putin defended the legitimacy of Khodorkovskiy's incarceration and accused Khodorkovskiy of also being a murderer. He also claimed that all of the earnings from the sale of Yukos were being funneled into the country's Housing and Utilities Fund. The Levada poll, however, showed that 65 percent of respondents did not believe Putin's claim about the Housing Fund, and 50 percent believed that Putin should be summoned as a witness in the case.

#### Khodorkovskiy starting to lose hope

---

¶7. (SBU) Khodorkovskiy and Lebedev have consistently maintained an upbeat demeanor, frequently smiling and laughing during the proceedings, and chatting buoyantly with

supporters. Over the course of his imprisonment, Khodorkovskiy has written a series of philosophical articles (printed in liberal papers such as Vedomosti) that have amounted to shadow policy papers of the type that he might write if he were one of the President's advisors. He had also expressed faith that the Russian court system would exhibit sufficient fairness and rule of law, and Judge Danilkin sufficient independence, to acquit him. In recent months Khodorkovskiy has made pessimistic statements that he does not expect ever to be freed. By all accounts, in 2003 Khodorkovskiy did not believe he would actually be arrested. His thinking here seems to following a similar trajectory, from naive refusal to believe what is happening, to the gradual sinking in of the reality of his situation.

Comment

-----

18. (C) The fact that legal procedures are apparently being meticulously followed in a case whose motivation is clearly political may appear paradoxical. It shows the effort that the GOR is willing to expend in order to save face, in this case by applying a superficial rule-of-law gloss to a cynical system where political enemies are eliminated with impunity. It is not lost on either elite or mainstream Russians that the GOR has applied a double standard to the illegal activities of 1990s oligarchs; if it were otherwise, virtually every other oligarch would be on trial alongside Khodorkovskiy and Lebedev. There is a widespread understanding that Khodorkovskiy violated the tacit rules of the game: if you keep out of politics, you can line your pockets as much as you desire. Most Russians believe the Khodorkovskiy trial is politically motivated; they simply do not care that it is. Human rights activists in general have an uphill battle in overcoming public apathy and cynicism, but nowhere more so than in the Khodorkovskiy case. We will continue to monitor the case as it unfolds.  
Rubin